

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,)
)
v.)
)
JOSE FONTANEZ)

Case No. 2:18-cr-142

OPINION AND ORDER
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
DENYING § 2255 PETITION, AND
DENYING A CERTIFICATE OF APPEALABILITY
(Docs. 72 & 82)

This matter came before the court for a review of the Magistrate Judge's July 25, 2023 Report and Recommendation ("R & R") (Doc. 82), in which the Magistrate Judge recommended that the court deny self-represented Defendant Jose Fontanez's 28 U.S.C. § 2255 petition in which he seeks to vacate his guilty plea and obtain a reduction of his sentence of 120 months imprisonment imposed pursuant to a Fed. R. Crim. P. 11(c)(1)(C) plea agreement, based on his claim that the court incorrectly calculated the quantity of drugs involved in his offense. (Doc. 72.) Defendant further claims that his requested relief is warranted because his counsel was ineffective by allegedly failing to (1) share discovery, charging documents, and the Presentence Report; (2) challenge the court's application of enhancements under the Sentencing Guidelines, (3) investigate the drug quantity applied under the Sentencing Guidelines and the converted drug weight calculation; and (4) appeal Defendant's conviction and sentence. No party has filed an objection to the R & R, and the time period to do so has expired.

Defendant is self-represented. The government is represented by Assistant United States Attorneys Paul J. Van de Graaf and Nathanael T. Burris.

A district judge must make a de novo determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir.

1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his twenty-two-page R & R, the Magistrate Judge carefully reviewed the factual allegations, procedural history, and requests for relief set forth in Defendant's § 2255 petition and correctly recommended denial because the court did not commit plain error when it calculated the drug quantity in this case and because Defendant failed to demonstrate his attorney's representation was objectively unreasonable. *See* 28 U.S.C. § 2255(b); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). These conclusions are well-reasoned and the court adopts them in full.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 82) as the court's Opinion and Order and DENIES Defendant's § 2255 petition. (Doc. 72.)

Pursuant to Fed. R. App. P. 22(b)(1) and 28 U.S.C. § 2253(c)(2), the court DENIES Petitioner a certificate of appealability in this matter because Petitioner has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 21st day of September, 2023.



Christina Reiss, District Judge
United States District Court